IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.189 OF 2005

Anil Vishnu Adate & ors. .. Appellants

Versus

Shiva Savva Adate & ors. .. Respondents

Mr.Anil Kumar Patil for appellants

Mr.Umesh R.Manakapure for respondent no.1

CORAM : P.V.KAKADE, J.

DATE : 20TH JUNE, 2005.

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by District Judge, Sangli dismissing the appeal and confirming the judgment and order passed by Civil Judge, Junior Division dated 24.3.1995 dismissing the suit.

2. I heard the learned counsel for both the parties. Perused the record.

3. The plaintiffs had filed the suit for declaration and setting aside the judgment and decree arising out of Regular Civil Suit No.170 of 1981 on the ground that the suit transaction was not binding upon them and consequently the decree passed consequent to the suit transaction was not binding upon them as there was no legal necessity to enter into contract to father of the plaintiffs. The learned trial judge adjudicated the dispute on merits and came to the conclusion that there was no sufficient evidence to show that the impugned transaction was not for legal necessity of the family and therefore, the consequent decree passed in R.C.S. No.170 of 1981 was not liable to be set aside and had become final and as such the suit came to be dismissed.

5. The appeal was carried to the District Court. The appellate court came to the conclusion that the defendant no.1 had proved that defendant no.2 was indebted and he agreed to sell the suit property to defendant no.1 for repayment of loan and for legal necessity of his family. It was also held that the

defendant no.3 had proved that the defendant no.2 sold out property to the defendant no.3 for legal necessity. The defendants possession was also held to be proved in the suit property and the suit was held not liable to be maintainable and as such appeal came to be dismissed. Hence the present appeal.

6. At the outset it may be noted that there is no substantial question of law involved in this appeal. In fact both the courts below have rightly held that there is absolutely no evidence on record for want of legal necessity in impugned transaction amongst the parties. The learned counsel for the appellant brought to my notice certain observations in the trial court judgement in order to show that the defendants remained absent in the said earlier suit so as to facilitate the passing of decree therein. This observation, in my considered view, would not go to the root of the matter, even though it is found that the defendants willfully remained absent on the date of hearing of the earlier suit. Be as it may, the fact remains that there is absolutely no substantial question of law involved and as such the appeal stands dismissed with no order as to costs.

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